

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
YOUNG BROTHERS, LIMITED)
For Approval to Amend Commodity)
Rate Item No. GC and Commodity)
Rate Item No. YB in Local Freight)
Tariff No. 5-A. Transmittal)
No. 03-0204.)

DOCKET NO. 04-0084

ORDER NO. 20943

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DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed April 29, 2004
At 3:00 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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_____)

Docket No. 04-0084

Order No. 20943

ORDER

I.

Introduction

YOUNG BROTHERS, LIMITED ("Young Brothers" or "YB") seeks the commission's approval to amend, in its Local Freight Tariff No. 5-A ("Tariff 5-A"): (1) Commodity Rate Item No. GC ("Item No. GC"); and (2) Commodity Rate Item No. YB ("Item No. YB").¹ On March 12 and April 6, 2004, Young Brothers provided additional information in supplement of its application.² Young Brothers' proposed tariff changes are attached as exhibits to its application, as amended.³

Young Brothers submits its application in accordance with Hawaii Revised Statutes ("HRS") §§ 271G-16, 271G-17, and

¹Young Brothers' transmittal number 03-0204, filed on February 27, 2004.

²See Young Brothers' letter, dated March 11, 2004, and filed on March 12, 2004; and Young Brothers' letter, dated April 5, 2004, and filed on April 6, 2004.

³The proposed tariff changes are also attached as exhibits to this decision and order.

Hawaii Administrative Rules ("HAR") §§ 6-61-94, 6-65-5, and 6-65-30. The effective date of Young Brothers' proposed tariff changes, unless otherwise suspended by the commission, is May 1, 2004.⁴

Young Brothers served copies of its application upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). The Consumer Advocate does not object to the commission's approval of Young Brothers' application, finding the proposed tariff changes reasonable.⁵

On April 1, 2004, the proprietor for Palms of Hawaii, a Pahoehoe-based, island of Hawaii landscaping company ("tree shipper"), filed a "Letter of Complaint," objecting to Young Brothers' proposed rate increase and urging the commission's denial thereof.⁶

⁴Young Brothers' letter, dated April 5, 2004, and filed on April 6, 2004.

⁵Consumer Advocate's position statement, filed on March 23, 2004.

⁶The tree shipper's "Letter of Complaint" consists of a single-page letter, with attachments. The attachment includes a document entitled "formal complaint," with a notarized verification dated December 29, 2003, and two (2) certificates of service, dated December 29, 2003 and January 6, 2004, respectively.

By letter dated April 6, 2004, commission staff: (1) instructed the tree shipper to serve copies of his documents upon Young Brothers and the Consumer Advocate; and (2) advised him that "your complaint against Young Brothers, Ltd. regarding the alleged mishandling of your shipment of coconut palms on November 17, 2003 is an issue that is separate from the matter involving Transmittal No. 03-0204."

II.

Rule No. 85

Item No. GC, as proposed, and Item No. YB (current and proposed), both refer to Young Brothers' Rule No. 85, governing long length penalties and charges. Rule No. 85 provides:

A. Except as otherwise provided in this tariff, all forkliftable pieces, packages or units over 30-feet in length, not on wheels, shall be subject to a penalty charge of \$3.72 per unit of 10-feet or fraction thereof in excess of 30-feet with the sum of penalty assessed to shipment on a revenue ton basis. The penalty assessed is in addition to freight rates and charges named in this tariff.

B. Except as otherwise provided in this tariff, all Ro/Ro shipments, with or without cargo, in excess of 40-feet in length shall be subject to a penalty charge of \$3.72 per unit of 10-feet or fraction thereof in excess of 40-feet with the sum of penalty assessed to shipment on a revenue ton basis. The penalty assessed is in addition to freight rates and charges named in this tariff.⁷

C. Any shipment in excess of 60-feet will be accepted subject to facility and equipment limitations and subject to special handling charges of \$7.45 per revenue ton in addition to freight rates and charges named in this tariff.

III.

Items No. GC and No. YB

A.

Item No. GC, Note 7

Item No. GC applies to the shipment of cargo utilizing shipper-owned equipment. Specifically, Item No. GC applies to cargo moved: (1) on shipper-owned pallets; (2) in shipper-owned

⁷"Ro/Ro" refers to roll-on, roll-off.

vans; and (3) on shipper-owned containers, i.e., twenty (20)-foot, forty (40)-foot, forty-five (45)-foot, and non-standard size. See Exhibit 1, attached.

Young Brothers proposes certain substantive changes to Item No. GC. In particular, it seeks to amend Item No. GC, Note 7, to read as follows (deletions bracketed, additions underscored):

Flatracks [and platforms] will be rated at the appropriate container rate. Platforms will be rated at the appropriate non-standard size container rate (GCNS). Cargo extending beyond the dimensions of the flatrack or platform will be assessed an additional charge of 25% of the applicable freight charge. Cargo extending beyond 10 feet of the original unit length will be charged Long Length penalties, pursuant to Rule No. 85, in addition to the aforementioned surcharge.

See Exhibit 1, attached.⁸

Thus, Young Brothers seeks to: (1) change the method for calculating the charge for the shipment of cargo utilizing shipper-owned platforms, from the container size rate (current) to the non-standard size container rate (proposed); and (2) add a long length penalty for the shipment of cargo utilizing shipper-owned equipment (all types).

B.

Item No. YB, Note 3

Item No. YB applies to the shipment of cargo utilizing Young Brothers-owned equipment. Specifically, Item No. YB

⁸The term "original unit length" means up to thirty (30) feet.

applies to cargo moved in Young Brothers-owned G-vans, flatracks (twenty (20)-foot), platforms (twenty (20)-foot and forty (40)-foot), and containers (twenty (20)-foot and forty (40)-foot). See Exhibit 2, attached.

Young Brothers proposes certain non-substantive changes to clarify the language of Item No. YB. In particular, Young Brothers seeks to amend Item No. YB, Note 3, to read as follows (deletions bracketed, additions underscored):

Cargo extending beyond the dimensions of the flatrack or platform [up to 30 feet] will be assessed an additional charge of 25% of the applicable freight charge. Cargo extending beyond [30 feet] 10 feet of the original unit length will be charged Long Length penalties [in], pursuant to Rule No. 85, in addition to the aforementioned surcharge.⁹

See Exhibit 2, attached.

Young Brothers' proposed changes to Note 3 will not affect (i.e., increase or decrease) the charges, rates, or penalties for shippers that transport their cargo utilizing Young Brothers-owned equipment under Item No. YB. Rather, Young Brothers seeks to make the long length charges set forth in Rule 85 identical for both Item No. GC and Item No. YB.

⁹See footnote 8, above.

IV.

Young Brothers

A.

Rationale

Young Brothers states that, in comparing the platform rate and long length charges for shipper-owned platforms and flatracks (Item No. GC) with the rates and charges for Young Brothers-owned platforms and flatracks (Item No. YB), the proposed tariff changes "should be made to Tariff 5-A to improve the level of service to [its] customers, to maintain the integrity of Tariff 5-A, and to ensure consistent application of Tariff 5-A Statewide."

That said, Young Brothers explains that its reasons for amending Note 7 are two (2)-fold:

1. Tariff 5-A currently requires shipper-owned platforms to be rated at the appropriate container unit rate. The proposed changes provide for a shipper-owned platform, non-standard size container rate (aka GCNS), and "some incentive for shippers to use their own equipment[.]"¹⁰

¹⁰Example. Under Young Brothers' present rate structure, a shipper using its own twenty (20)-foot platform pays a flat rate of \$299.25 (Item No. GC). If that same shipper uses Young Brothers' twenty (20)-foot platform, the shipper pays \$178.20 (Item No. YB). Thus, a shipper is effectively "penalized" with a higher rate for using its equipment. See Young Brothers' application, at page 5.

Under Young Brothers' proposed rate restructuring, that same shipper, using its own twenty (20)-foot platform, pays \$126.84 (Item No. GC), representing a savings of \$172.41. (The rate for using Young Brothers' twenty (20)-foot platform remains the same, \$178.20 (Item No. YB)). See Young Brothers' application, at page 5.

2. Tariff 5-A currently provides for an inconsistency in long length charges for shipper-owned and Young Brothers-owned platforms and flatracks. In essence, the long length charge presently applies only for shipments utilizing Young Brothers-owned equipment, and not to shipper-owned transports. Hence, the proposed changes will correct this inconsistency and "allow for fairness and consistency necessary to recover costs relating to all cargo tendered on platforms and flatracks that extends beyond the dimensions of the container unit."¹¹

B.

Affected Customers/Shippers

Young Brothers represents that two (2) customer classes "may be impacted by this filing for the additional long length charges on shipper-owned platforms:

1. Shippers who currently use YB platforms where long length charges apply (e.g., construction materials like rebar and

¹¹Example. Under Young Brothers' present rate structure, a shipper using its own twenty (20)-foot platform to ship cargo with a length of fifty (50) feet pays \$374.06 (Item No. GC). If that same shipper uses Young Brothers' twenty (20)-foot platform, the shipper pays \$780.08 (Item No. YB). Thus, the shipper benefits from using its own platform, "since long length penalty charges are not applicable for [the shipper's] cargo." Young Brothers' application, at pages 6 - 7.

Under Young Brothers' proposed rate restructuring, that same shipper, using its own twenty (20)-foot platform, will now pay a higher freight charge of \$487.45 (Item No. GC). See Young Brothers' letter, dated April 5, 2004, at page 3, 3rd paragraph. (The rate for using Young Brothers' twenty (20)-foot platform remains the same, \$780.08 (Item No. YB)). See Young Brothers' application, at pages 7 - 8.

concrete items) would be positively impacted by this filing should future shipments be tendered on shipper-owned platforms which would be at the proposed GCNS lower rate. YB cannot reasonably estimate the number of shippers who would switch to shipper-owned platforms as a result of this proposed amendment.

2. Shippers who currently use shipper-owned platforms where long length charges apply would initially see a rate reduction from the lower platform rate but a higher long length charge should the length exceed greater than 10 feet beyond the unit size. YB is aware of only two customers in its system that move cargo where the length exceeds greater than 10 feet beyond the unit size."

With respect to paragraph number 2, above, Young Brothers describes the two (2) affected customers as:

- "a. One customer currently ships trees on shipper-owned platforms. This customer is an occasional shipper whose shipments are project related.¹²
- b. One customer ships concrete girders and pilings on their 30-foot platforms which are currently rated at the GCNS container rate due to its non-standard size. These shipments generally extend 12 feet beyond the 30-foot platform and therefore would be charged the long length charge under the proposed amendment. These shipments are also project based and costs are generally passed on to the project. Total estimated shipments for the year are not readily determinable however; YB's best estimate would approximate 24 shipments per year for these shipments. Total cubic feet for this shipment averages approximately 42 MT (42 x 8 x 5 divided by 40) which would translate to \$156.24 (42 MT x \$3.72 per MT) of additional charges per unit."¹³

¹²See footnote 6 and Section IV.B, above.

¹³"MT" = per 40 cubic feet = (length x width x height)/40.

V.

Tree Shipper

The tree shipper objects to Young Brothers' proposed tariff changes, asserting that he will be directly impacted by the long length charges -- i.e., with higher freight charges to ship his trees inter-island utilizing his platforms. He further contends that Young Brothers' proposed tariff changes are in retaliation for his on-going dispute involving Young Brothers' alleged mishandling of his shipment of coconut palms in November 2003.

Young Brothers acknowledges that its proposed tariff changes will result in a significant rate increase for the tree shipper. Concomitantly, Young Brothers notes that the tree shipper's rates "include a 30 percent discount as live plants are considered island product."¹⁴

VI.

Consumer Advocate

It is the Consumer Advocate's understanding that: (1) shippers in the construction industry (lumber, piping, plywood, rebar) are primarily affected by the proposed tariff changes; and (2) telephone poles and palm trees are other affected commodities.¹⁵

¹⁴Young Brothers is referring to its Commodity Rate Item No. DA. This tariff provision provides qualifying island agricultural products-shipments with a thirty (30) per cent discount off of the applicable shipping rate.

¹⁵See Consumer Advocate's position statement, at page 5.

A.

Item No. GC, Note 7, Shipper-Owned Platforms

In response to the first proposed change to Item No. GC, Note 7, the Consumer Advocate states that using the non-standard size container rate for shipper-owned platforms "is reasonable because platforms, in general, occupy less barge space than flatracks." In addition, upon its review of Young Brothers' first example, the Consumer Advocate finds that "a shipper will pay less under the proposed amendment based on cargo shipped within the dimensions of the shipper-owned platform."¹⁶

The Consumer Advocate concludes that this proposed tariff change: (1) will provide shippers with the incentive to utilize their own platforms instead of Young Brothers' platforms, due to the lower rate; and (2) the objective of increasing the use of shipper-owned platforms is reasonable because it will benefit the general ratepayers by delaying or mitigating the need for Young Brothers to invest in platforms, "which should lower the overall cost of service[.]"

B.

Item No. GC, Note 7, Long Length Charge

In response to the second proposed change to Item No. GC, Note 7, the Consumer Advocate reiterates that the long length charge currently applies only for shipments utilizing Young Brothers-owned equipment, and not to cargo using shipper-owned equipment. Thus, Tariff 5-A, as presently applied,

¹⁶See footnote 10, above.

is inconsistent by not penalizing all customers for shipping extra long cargo, regardless of whose equipment is used. Furthermore, upon its review of Young Brothers' second example, the Consumer Advocate finds that even with the higher charge to be incurred by the shipper under the proposed tariff change, the shipper will still benefit from using its equipment, as opposed to Young Brothers' equipment.¹⁷

The Consumer Advocate concludes that this proposed tariff change "will remove existing inconsistencies in the application of the long length charges."

C.

Revenue Impact

Without any specific data or information from Young Brothers, the Consumer Advocate is presently unable to ascertain the potential impact of the proposed tariff changes on Young Brothers' regulated revenues. Accordingly, the Consumer Advocate intends to "monitor the revenue and earnings impact of the proposed tariff changes by reviewing YB's monthly financial statements and investigate the reasons for any unusual trends."

VII.

Suspend and Investigate

In the Majority's view, Young Brothers' proposed tariff changes raise certain questions and concerns that are not

¹⁷See footnote 11, above.

answerable in the docket record. In brief, these concerns include whether: (1) the Zone of Reasonableness applies ("Zone"), and if so, whether the proposed changes violate the Zone; (2) the reasons, timing, and importance of the proposed changes; (3) whether other perceived "inequities" in Young Brothers' rate structure exist; and (4) the impact of the proposed changes on customers and Young Brothers' regulated revenues.

The Majority will suspend transmittal number 03-0204, as amended, for a maximum period of six (6) months, up to and including October 29, 2004, in accordance with HRS § 271G-17(b) and (d), and HAR § 6-65-40.

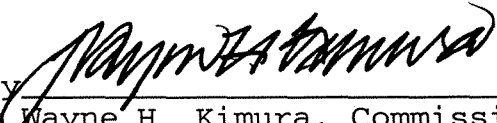
VIII.

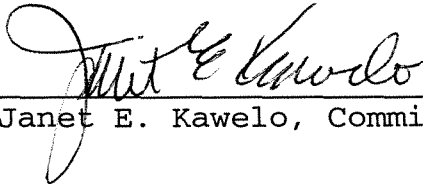
Order

THE MAJORITY ORDERS that Young Brothers' transmittal number 03-0204, as amended, is suspended for a maximum period of six (6) months, up to and including October 29, 2004, unless ordered otherwise. Further action will follow.


DONE at Honolulu, Hawaii this 29th day of April, 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

YB03.0204.sl

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OF THE STATE OF HAWAII

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No. 03-0204.)

Docket No. 04-0084

DISSENTING OPINION OF CARLITO P. CALIBOSO, CHAIRMAN

I respectfully dissent from the Majority's Order. The burdens of proof and persuasion is on Young Brothers to show that its proposed tariff changes are just and reasonable.

Young Brothers' proposed tariff changes to Item No. GC will effectively:

1. Encourage shippers to use their equipment by applying the existing non-standard size container rate (aka GCNS) to cargo shipped with shipper-owned platforms; and
2. Eliminate the current inconsistency in Young Brothers' application of its long length charges by also assessing these charges on shipper-owned transports.

In my opinion, Young Brothers, through its various filings, has met its overall burden. No additional information or data from Young Brothers, or a hearing on the merits, is necessary. Thus, I also disagree with the Majority's plan to issue information requests to Young Brothers.

In addition, the Majority suggests that Young Brothers' proposed tariff changes, if implemented, will exceed the Zone of Reasonableness ("Zone").¹ I disagree.

In my view, the Zone is irrelevant and inapplicable to the proposed tariff changes. Young Brothers' transmittal does not change (i.e., increase or decrease) any of its tariff rates or charges. Instead, Young Brothers intends to: (1) change the method for calculating the charge for the shipment of cargo utilizing shipper-owned platforms, from the container size rate to the non-standard size container rate (aka GCNS); and (2) assess the long length penalty for the shipment of cargo utilizing shipper-owned equipment, which, unlike Young Brothers-owned transports, are currently not assessed a long length penalty. The manner and application of the GCNS rate and long length penalty on shipper-owned equipment will change, but the amounts assessed for this charge and penalty, respectively, remain the same. The Zone is neither implicated nor violated by the proposed tariff changes.

I would allow Young Brothers' proposed tariff changes to take effect, effective from May 1, 2004.

DONE at Honolulu, Hawaii this 29th day of April, 2004.

By 
Carlito P. Caliboso, Chairman

¹Young Brothers' Zone is currently set at a maximum rate decrease of ten (10) per cent, and a maximum rate increase of 5.5 per cent, over a twelve (12)-month period.

COMMODITY RATE

ITEM NO. GC

For rates between two ports not shown hereon, see rule no. 180
 OTHERWISE SPECIFIED

IN DOLLARS & CENTS PER W/M, UNLESS

BETWEEN HONOLULU AND

Hawaii County
 Hilo/Kawaihae

Kauai County
 Nawiliwili

Maui County
 Kahului Molokai Lanai

CARGO, N.O.S.

A. N.O.S. GCLS GCMX	Per W/M:	26.89	25.32	25.32	25.32	25.32
B. SHIPPER'S PALLET: Subject to Note 2 GCPA	Per W/M:	23.47	22.60	22.60	22.60	22.60
C. SHIPPER'S VAN: At S/L/C. Per W/M: Subject to Notes 3, 4, and 5. GCVN		20.38	19.13	19.13	19.13	19.13
D. SHIPPER'S CONTAINER: At S/L/C. Subject to Notes 3, 4, 6, 7, and 9.						
1. 20-Foot GCTW	Each:	299.25	299.25	299.25	299.25	299.25
2. 40-Foot GCFO	Each:	598.48	598.48	598.48	598.48	598.48
3. 45-Foot GCFV	Each:	752.50	752.50	752.50	752.50	752.50
4. Non-Standard Size GCNS	Per 40 Cuft	10.57	10.57	10.57	10.57	10.57

NOTES:

1. All rates named in this Item do not include loading and/or unloading of goods from container or van.
2. Shipment subject to Rule No. 12 (Application of Palletized Cargo Rates) and Rule No. 165 (Shipper's Load and Count).
3. Each container or van must be suitable for mechanical forklift handling and constructed to allow another top load. Carrier reserves the right to refuse containers unsuitable for ocean transportation.
4. Freight charges to be assessed on the outside dimensions of container or van.
5. Vans tendered under this Item subject to a minimum charge of 80 cubic feet per van.
6. Container rates apply to containers shipped off chassis. Containers shipped on chassis at the request of the shipper, shall be charged at the applicable Roll On/Roll Off rate under Item RR. At Carriers request and no further charge, containers to Molokai and Lanai may be shipped on chassis if weight exceeds facility capacity.
7. Flatracks will be rated at the appropriate container rate. [A] Platforms will be rated at the appropriate non-standard size container rate (GCNS). Cargo extending beyond the dimensions of the flatrack or platform will be assessed an additional charge of 25% of the applicable freight charge. [A] Cargo extending beyond 10 feet of the original unit length will be charged Long Length penalties, pursuant to Rule No. 85, in addition to the aforementioned surcharge. XLFR
8. Glass shipped on glass racks will be assessed 50% of the N.O.S. cargo rate in accordance with Decision and Order No. 15228. GLAS.
9. For shippers eligible for the Volume Discount in Item DC, the appropriate freight rate charge includes the round-trip movement of one loaded and one empty container.

ISSUED: February 27, 2004

EFFECTIVE: May 1, 2004

ISSUED BY: LISA M.K. SAKAMOTO

YOUNG BROTHERS, LIMITED * PIER 40* HONOLULU * HAWAII * 96817

COMMODITY RATE

ITEM NO. YB

For rates between two ports not shown hereon, see rule no. 180
 OTHERWISE SPECIFIED

IN DOLLARS & CENTS PER W/M, UNLESS

BETWEEN HONOLULU AND

<u>Hawaii County</u>	<u>Kauai County</u>	<u>Maui County</u>		
Hilo/Kawaihae	Nawiliwili	Kahului	Molokai	Lanai

CARRIER FURNISHED EQUIPMENT

Subject to Notes.

1. G Van YBVN	Each:	91.56	77.55	77.55	77.55	77.55
2. 20-Foot Container YBCN	Each:	353.65	353.65	353.65	353.65	353.65
3. 20-Foot Refrigerated Container YBRF	Each:	408.06	408.06	408.06	408.06	408.06
4. 20-Foot Flatrack YBFR	Each:	359.09	359.09	359.09	359.09	359.09
5. 20-Foot 40-Foot Platform YBP2 YBP4	Per 40 Cuft:	14.85	14.85	14.85	14.85	14.85
6. 40-Foot Container YB4C	Each:	700.00	700.00	700.00	700.00	700.00
7. 40-Foot Refrigerated Container YB4R	Each:	775.00	775.00	775.00	775.00	775.00

NOTES:

1. All shipments received at Shipper's Load and Count. See Rule No. 165 (Shipper's Load and Count).
2. Rates do not include loading and/or unloading of goods from Carrier's equipment.
3. Cargo extending beyond the dimensions of the flatrack or platform will be assessed an additional charge of 25% of the applicable freight charge. [A] Cargo extending beyond 10 feet of the original unit length will be charged Long Length penalties, pursuant to Rule No. 85, in addition to the aforementioned surcharge. XLFR.
4. Equipment specifications as noted in Rule No. 40 (Carrier Furnished Container/Van Specifications).
5. Subject to Rule No. 50 (Free Time for Carrier Equipment and Detention Charges) and Rule No. 75 (Liability for Carrier's Equipment in Shipper's or Consignee's Possession).
6. Platform will be charged at a minimum base of the length and width dimension of the platform.
7. The availability of forty-foot containers limited to the Carrier's inventory on hand.

ISSUED: February 27, 2004

EFFECTIVE: May 1, 2004

ISSUED BY: LISA M.K. SAKAMOTO
YOUNG BROTHERS, LIMITED * PIER 40 * HONOLULU * HAWAII * 96817

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20943 and the Dissenting Opinion of Carlito P. Caliboso, Chairman upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

LISA M. K. SAKAMOTO
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AND GOVERNMENT AFFAIRS
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WRAY H. KONDO, ESQ.
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Karen Higashi

DATED: April 29, 2004